

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

RUSSELL & MARY SPARROW,)	
)	DOCKET NO.: PT-1996-24
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal came on regularly for hearing on the 10th day of October, 1997, in the City of Great Falls, Montana, pursuant to the order of the State Tax Appeal Board of the State of Montana (the Board). The notice of said hearing was duly given as required by law setting the cause for hearing. The taxpayers, represented by Russell Sparrow, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Jason Boggess, appraiser, presented testimony in opposition thereto. At this time and place, testimony was presented, exhibits were received and the Board then took the cause under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it for its consideration by all

parties in the Docket, and being well and fully advised in the premises, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Land only containing 13.32 acres in
Section 8 T19N R2E, Cascade County,
Montana.

3. For the 1996 tax year, the DOR appraised the subject property at a value of \$27,320 for the land and \$44,900 for the improvements.

4. The taxpayer appealed to the Cascade County Tax Appeal Board requesting a reduction in value to \$13,320 for the land and \$28,060 for the improvements.

5. The County Board granted the requested value for the improvements after the DOR revised the value at the local board hearing but denied any reduction to the land value.

6. The taxpayer then appealed that decision to this

Board.

7. The subject property had been appraised for the 1993 appraisal cycle at \$13,320, the value sought by the taxpayer. In 1996 the DOR revised the value to \$27,320: 1 acre at \$15,000 and 12.32 acres at \$1,000 per acre. The DOR believed the 1993 base year value to have been an error as that value did not recognize the river frontage aspects of this property.

8. The DOR did not revise the value indication for taxation purposes for any year prior to 1996.

9. The land is bordered by the Missouri River and has been subjected to flooding in the past.

10. The DOR presented the Property Record Card, showing the legal description and property size.

TAXPAYER'S CONTENTIONS

Mr. Sparrow testified that he had been to the County Surveyor's office and discovered that development of the subject property is limited due to restrictions imposed in the floodplain. He estimates that approximately 4 acres or less is "buildable" based on his measurements. He has not had a surveyor on the parcel to confirm by elevations how much of the parcel is actually so impacted. Where the house currently sits

is not affected by flooding. He stated that there may be one or two building sites on the south end of his property.

Mr. Sparrow stated that he has not tried to sell the property; however, he has turned down "offers to buy" of \$30,000 for a building site and \$100,000 for the entire property including the improvements. He believes land that is not buildable is not worth as much as land that is. He stated that "maybe \$500" would be a proper value per acre. He stated that when the land was valued at \$1,000 per acre he had no problem with the value. When it increased to \$15,000 for 1 acre with the remainder \$1,000 per acre, he could not agree as 70% is in the floodplain.

DOR CONTENTIONS

The DOR stated that the floodplain nature, or flood zone area, has been considered. Mr. Boggess testified that exhibit A indicates that fact, as well as indicating that the primary acre is valued at \$15,000 and the remaining 12.32 acres are valued at \$1,000 per acre. He stated that the DOR gets their information from sales from a certain time frame. He stated that the sales used here would be from 1986 through 1992. He stated that he did not have any Computer Assisted Land Pricing (CALP) information or sales to support the values

utilized. Mr. Boggess also pointed out that this parcel had been the subject of a prior appeal to this Board, and he read from a portion of that decision.

Mr. Boggess stated that sales from 1996 reviewed for the appraisal cycle beginning in 1997 were not used in arriving at the current value. He did comment about two sales that are less than a mile from the subject but presented nothing of the particulars of either sale that might support the value on the subject.

BOARD'S DISCUSSION

The record contains an exhibit presented by the DOR at the local board hearing on this matter. At the hearing before this Board, that exhibit was described as not being applicable to the valuation of this parcel for 1996. The Board was told that, in fact, the sales on that exhibit were not used to determine the value. There was however, no presentation of sales that were used to establish the value in question.

Contrary to the DOR testimony, exhibit A does not indicate how the portions of this parcel included in the flood plain or flood zone have been either determined or treated in the valuation process. The record indicates that, in fact, there had not been a determination of how much of this land is

impacted by flooding or is in the flood plain. The exhibit "A" has a number of influence factors, one of them being "8 Flood Plain". The Board notes the column where that code is to be placed is blank, the percentage is "000", and the exhibit merely shows that the values were changed from \$13,320, to \$27,320. The changes were apparently made manually since they are written in by hand. There is a further indication of change on the exhibit where the "Neighborhood Trend" was previously "081" and the numbers are changed to "084".

The appraiser who represented the DOR at this hearing stated more than once that the values are determined from sales in the area, yet the DOR provided nothing to support what is a mid appraisal cycle value change on this land. This had to have been done for a reason. That reason, or reasons, were never supported at the hearing on this matter. There supposedly was an error in the valuation that had been on this property since the 1993 appraisal cycle began, yet that was not supported at the hearing. It should be noted that the value for the improvements was also changed in 1996, even though the DOR had not challenged a 1993 STAB decision in District Court nor had the property been changed.

The testimony concerning what price may have been

offered and what price may have been turned down by the taxpayer is not probative of the value of this parcel. It is quite possible that it merely indicates that this property is not for sale.

The Board notes that if the value indications presented by the taxpayer are used to calculate a market value, that is 9 acres (approximately 70% of 12.23 acres) at \$500 per acre, 3.23 acres at \$1,000 per acre, and a 1 acre building site at \$15,000, the value indication is \$22,730. The taxpayer presented no sales to support his indication of value. He did, however, offer a more pictorial depiction, even though not one with detailed accuracy, of how much of this parcel is impacted by flooding and the flood plain. The taxpayer additionally testified that he paid \$35,000 for the property, which includes a house, in approximately 1990 or 1991.

It is the opinion of this Board that neither party presented sufficient evidence to support their requested values. A taxpayer is allowed to present a value indication as was done here, albeit not the same value as requested in the appeal, to the local board or to this Board. The evidence utilized by the DOR at the local board hearing to support their value was essentially withdrawn by the DOR appraiser at the

hearing before this Board, since his testimony was that it was not used to establish the contested value. This appeal is therefore granted in part and denied in part and the decision of the local board is modified.

CONCLUSIONS OF LAW

It is true, as a general rule, that the appraisal of the Department of Revenue appraisal is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)). This Board finds that the evidence presented by the Department of Revenue did not support the values assessed.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall be entered on the tax rolls of Cascade County by the Assessor of said County at the 1996 tax year value of \$22,730 for the land.

Dated this 28th of October, 1997.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

PATRICK E. MCKELVEY, Chairman

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.